
Memorandum to the US Patent Office

1 Opinion sought

We have been asked to provide an opinion as to whether a court of competent jurisdiction in Australia would by the weight of authority in Australia award title in the Invention to Q-Vis Limited.

The Invention is the "surgical visual feedback and eye fixation method and apparatus" the subject matter of International patent application no PCT/AU99/00665.

2 Documents

In preparing this opinion we have considered the following documents and material:

- (1) International patent publication WO 00/09002 for an invention entitled "Surgical visual feedback and eye fixation method and apparatus" (the "Invention").
- (2) An appointment agreement dated 16 March 1987 between Lions Eye Institute Of Western Australia Incorporated (LEI) and Dr Van Saarloos.
- (3) An employment agreement dated 1993 between LEI and Dr Van Saarloos.
- (4) A service agreement dated 21 May 1999 but effective 1 January 1999 between LEI and Dr Van Saarloos.
- (5) A Statement by Ian Jeffrey Constable made on 11 November 2002.
- (6) An assignment deed between LEI and Q-Vis Limited dated 30 October 2000.

3 Legal analysis

3.1 Legal relationship between and LEI and Dr Van Saarloos

The relationship between LEI and Dr Van Saarloos pursuant to which Dr Van Saarloos undertook research activities at LEI is governed primarily by three agreements:

- (a) an appointment agreement dated 16 March 1987;
- (b) an employment agreement signed by LEI and Dr Van Saarloos in 1993; and
- (c) a service agreement dated 21 May 1999.

The agreement referred to in (b) confirms the terms and conditions of the 1987 appointment agreement and inter alia purports to provide for an extension of the

period of employment of Dr Van Saarloos for a further five years. We are aware from correspondence dated 1 September 1993 that was attached to the signed original of this agreement (which contains confidential remuneration information) that this agreement was signed in or about September 1993.

Together, the three agreements (the **Agreements**) cover the period from 16 March 1987 until at least August 1999 (the **Contract Period**).

The agreements set out the scope of the activities to be performed by Dr Saarloos for the benefit of LEI and the conditions under which they were to be performed, together with the rights and obligations of both parties.

The statement of Ian Jeffrey Constable dated 11 November 2002 states that Dr Van Saarloos undertook research activities for LEI continuously throughout the Contract Period in accordance with the terms of the Agreements.

3.2 Enforceability of the Agreements

Under Australian law, there are a number of requirements which must be met before a Court will enforce a contractual bargain:

- (a) the parties must have agreed on the terms of the bargain and demonstrate the intention to enter into a binding and final legal relationship;
- (b) the parties must have the capacity to contract;
- (c) valuable consideration must have been exchanged between the parties;
- (d) the terms of the contract must be certain.

The signature of both LEI and Dr Van Saarloos on the Agreements is prima facie evidence of the intention of the parties to freely and voluntarily enter into legal relations and to be bound by the terms of the Agreements.

Further, as stated in the statement of Ian Jeffrey Constable, at all material times Dr Van Saarloos performed services in accordance with the Agreements and was paid for those services in accordance with the Agreements.

On the basis of these factors, our assumption that Dr Van Saarloos had the requisite capacity to enter into the Agreement and our review of the Agreements, it is highly likely that an Australian Court would consider that these requirements have been met such that the Agreements would be enforceable contracts under Australian law.

Accordingly, all rights granted by Dr Van Saarloos to LEI pursuant to these Agreements would be likely to be enforceable in an Australian Court.

3.3 Rights granted to LEI by the Agreements

The Agreements contain a number of clauses pursuant to which LEI is granted a contractual right to ownership of intellectual property (including inventions and patents) "conceived of, created or made" by Dr Van Saarloos during the period from 16 March 1987 to 31 December 1998 or "created" by Dr Van Saarloos between 1 January 1999 and at least August 1999 in the circumstances set out below:

- (a) where the intellectual property was within the existing or contemplated scope of any portion of the Institute's business or activities or related to

any subject matter with which Dr Van Saarloos' work at LEI was or may have been concerned;

- (b) where the intellectual property was made or conceived of with the use of LEI's information, material, facilities or resources or which was suggested by or resulted from Dr Van Saarloos' work with LEI;
- (c) where the intellectual property related to machines, processes, computer software and/or programs and/or related systems, devices, compositions and matter, manufactured from, made used or sold by LEI or third parties or which LEI may have (during the Contract Period) made, used or sold;
- (d) where the intellectual property was created for the purpose of any client, contract or project of LEI or for any purpose related to the business of LEI; or
- (e) where the intellectual property was created within the scope of Dr Van Saarloos' employment by LEI.

Under Australian law it is possible to transfer rights and title in an invention to another party by way of a contractual bargain.

The statement of Ian Jeffrey Constable evidences that the Invention arose in one or more of these circumstances. Accordingly, pursuant to the Agreements, all rights, interest and title in the Invention are, in our opinion, vested in LEI.

4 Assignment of patent rights

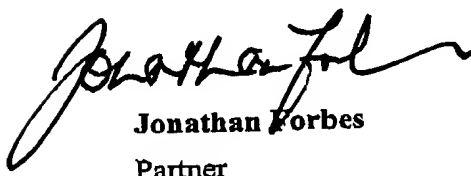
By virtue of a deed of assignment dated 30 October 2002 between LEI and Q-Vis Limited, LEI purported to transfer all rights, title and interest in the Invention to Q-Vis Limited.


It is our view that this transfer would be held to be enforceable by an Australian Court.

5 Conclusion

Based on the analysis presented above, it is our view that an Australian Court of competent jurisdiction would by the weight of authority in Australia award title in the Invention to Q-Vis Limited.

Prepared by Freehills 11 November 2002


Jonathan Forbes
Partner


Lisa Taliadros
Solicitor

16 March 1987

Mr P van Saarloos
Laser Scientist
Lions Eye Institute
2 Verdun St
NEDLANDS WA 6009

Dear Paul

OFFICIAL APPOINTMENT TO LIONS EYE INSTITUTE, 2 VERDUN STREET, NEDLANDS,
WESTERN AUSTRALIA 6009

You are invited to accept an appointment to work at the Lions Eye Institute ("the Institute") from the above date with support for your resources and salary as listed below. Please note that whether you are funded directly by the Institute, by outside research or service organisations, or will be working in a voluntary capacity, you are asked to indicate by signing the enclosed copy of this letter that you agree to the conditions of your appointment.

(1) Research and office space

This will be allotted to you and your co-workers on a needs basis by the Director and subject to alteration at any time. In general, alterations of allotment of space will be necessary whenever new research projects are initiated and when new appointees take up positions.

(2) Direction of eye research

The conditions of our lease of space and facilities from the Board of the Sir Charles Gairdner Hospital and the Incorporated Articles of the Institute lay down that the work of the staff will be directed towards the causes and prevention of blindness. It is the responsibility of the Director to interpret these objects in their widest sense. Because of the finite size and independent funding of the Institute, however, it will not be possible to house either individual research workers or ancillary staff whose general activities are not consistent with these aims. These general principles will be applied even in the case of independent outside funding, collaborative arrangements and voluntary work.

(3) General conduct and responsibilities

All appointees to the Institute will be required by the Director to adhere to generally acceptable moral and ethical codes of behaviour in carrying out research projects, in dealing with patients and the general public. In general, specific projects will be submitted to the Ethics

The Lions Eye Institute is an independent, non-profit organisation
established for the investigation, prevention and cure of eye disease.

and Experimentation Committee of the University of Western Australia or similar such bodies at the Sir Charles Gairdner Hospital or Royal Perth Hospital for approval. Guidelines for these matters and for various aspects of laboratory safety will be those laid down by the National Health and Medical Research Council and where possible, the services of the University Safety Officers will be employed. Any conflicts that arise from such matters should be referred to the Director of the Institute.

(4) Evidence of Workers' Compensation Insurance and External Contract Conditions of Employment

Where you are employed and where your research is funded by bodies outside the Institute, you are required to provide the Director written confirmation of:

- (a) Workers' Compensation Insurance
- (b) Evidence of independent contract conditions which state the relationship of the grantee to the funding grantor. Such evidence shall note and extend to include indemnity for liabilities which may attract to the Lions Eye Institute and to the Director arising out of the course of said employment for all work undertaken.

(5) Recruitment of Additional Staff

The sharing of facilities, space and resources with persons other than those appointed to the Institute will be permitted only after direct approval of the Director. This will apply to voluntary workers, grant employees and collaborative research arrangements with outside scientists.

(6) Donation of Equipment

All equipment obtained from outside granting bodies will become the permanent property of the Lions Eye Institute unless individual granting bodies so specify in writing to the Director that they remain the property of that body. No researcher or clinical worker will be permitted to install equipment which he or she considers to be their personal property unless approval is obtained from the Director in writing.

(7) Cessation of Appointment

Your appointment will cease on the date noted below at which time you will be eligible for re-appointment.

(8) Conservation of Resources

All appointees to the Institute are reminded that as a small autonomous body, the Institute has resources limited strictly by budget. Institute staff will be expected to conserve materials, share expertise and resources and minimise running costs as much as is practicable. This particularly applies to unfunded resources such as general laboratory supplies, animals, telephones and photocopying.

(9) Security

You are expected to observe all security procedures diligently and in particular to ensure all entrances are kept closed after hours and on weekends.

(10) Ownership of all Intellectual Property

All intellectual property including letters, patents, inventions, processes or know-how, ideas, discoveries and designs and any improvements to any inventions, processes, know-how, ideas, discoveries or designs (hereinafter referred to as "Inventions") created made or conceived by an appointee of the Institute whether solely or jointly with others whether or not patentable or copyrightable during the period of your employment with the Institute or within one year after expiration of your employment with the Institute that:

- (a) are within the existing or contemplated scope of any portion of the Institute's business or activities or relate to any subject matter with which your work with the Institute is or may be concerned; or
- (b) is made or conceived with the use of the Institute's material, facilities or which are suggested or result from your work with the Institute; or
- (c) relates to machines, processes, computer software and/or programs and/or related systems, devices, compositions and matter, manufactured from, made, used or sold by the Institute or third party or which the Institute may hereafter during the period of your employment, make, use or sell,

shall be the sole property of the Institute and the appointee shall be request and at the cost of the Institute, executive and do all instruments and things necessary to vest the right, title and benefit in the Inventions in the Institute or any person or persons or company appointed by the Institute.

(11) Patents

Where research carried out using resources of the Institute including space leads to potential commercial patents, it is a condition of your appointment that the Institute will meet the costs of patent searches and other legal fees and that such patent will be taken out in the sole name of the Institute. Personal benefits may be negotiated for the individual Institute appointee at the absolute discretion of the Director.

(12) Full Disclosure to Institute

As an appointee engaged in eye research, development or related services, you shall disclose fully to the Director in writing, the progress of your work investigations and Inventions and shall make and maintain adequate and current written and witnessed records of all work, investigations and Inventions, in the form of notes, sketches, drawings or reports relating thereto, and that all records, writings and design relating to Inventions or to work or investigations of the Institute shall be and remain the

property of the Institute, and shall be at all times available to the Institute with the Institute having sole right to use such records, writings or designs anywhere and if at any time the appointee shall make or conceive any invention, innovation or improvement arising out of or in connection with his employment with the Institute either solely or jointly with others or as required by this Agreement he shall forthwith disclose fully in writing to the Director of the Institute a full and complete description of the nature of the invention, innovation or improvement and the mode of its performance.

(13) Non-disclosure

You will keep in strict confidence and not disclose to any outside party either during or after your employment, nor to use during or after your employment without the Institute's written consent, any technical or non-technical information, knowledge, data or know-how of the Institute or of third parties obtained by you during your employment, whether developed by you or not relating to any research, invention, non-patentable processes, know-how, designs or improvements to any invention which is treated by the Institute or third party private, trade-secret or proprietary.

(14) The Director

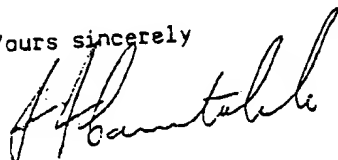
Until you are otherwise notified in writing the Director is Professor Ian Constable.

Source of Salary Support: Lions Eye Institute

Appointment of Review Date: No fixed date

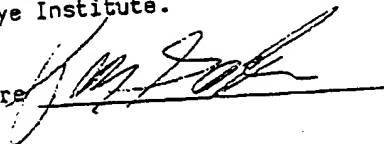
I trust your appointment to the Institute will enhance your work potential and satisfaction.

Yours sincerely



Ian Constable
Director

I understand and agree to the above conditions of my appointment to the Lions Eye Institute.

Signature 

Date 16/3/87

Lions Eye Institute Inc

and

Dr. Paul Van Saarloos

Employment Agreement

Freehill Hollingdale & Page
Barristers, Solicitors & Notaries
Australia Place
9th Floor
15-17 William Street
Perth
Western Australia 6000

Telephone: 327 5777
Reference: EXCI9260-001

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 1993.

BETWEEN:

1. LIONS EYE INSTITUTE INC of Level 2, 2 Verdun Street, Nedlands, Western Australia ("LEI"); and
2. DR. PAUL VAN SAARLOOS of c/- 2 Verdun Street, Nedlands, Western Australia ("Dr van Saarloos").

RECITALS:

- A. Dr van Saarloos has been employed by LEI as a laser physicist since March 1987 on the terms contained in a Letter Agreement dated 16 March 1987.
- B. In the course of his employment with LEI, Dr van Saarloos has assisted the Excimer Laser Company Pty Ltd in the design and development of the excimer laser technology the property of the Company, and in the manufacture of devices which utilise that technology.
- C. The parties have agreed that Dr van Saarloos will continue to provide such assistance for 5 years as provided in this Agreement.

NOW IT IS HEREBY AGREED as follows:1. Definitions

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

"excimer laser" means the device known as an "excimer laser" which uses a refractive keratectomy system to treat humans with short-sightedness and other eye problems;

"Letter Agreement" is the agreement referred to in recital A;

"Share" means an ordinary fully paid share of \$1.00 in the capital of the Company; and

"the Company" means The Excimer Laser Company Pty Ltd (A.C.N. 009 234 173) of Level 2, 2 Verdun Street, Nedlands, Western Australia.

2. Period of Employment

Dr van Saarloos will continue to be employed by LEI for a period (the "Period") of at least 5 years from the date of this Agreement upon and subject to the conditions of the Latter Agreement as varied by this Agreement provided the Company remains solvent.

3. Service

During the Period, Dr van Saarloos will, in addition to other duties as a laser physicist, devote such time and attention as may be reasonably required by Professor Constable (and in his absence by the Company) in connection with the manufacture, after-sales service and technological development and improvement of the Company's excimer laser (the "Services").

4. Remuneration

In consideration for Dr van Saarloos providing the Services, LEI will:

- (a) pay Dr van Saarloos an annual salary of not less than the salary payable to a senior lecturer, as agreed from time to time between Dr van Saarloos and Prof. Constable.
- (b) procure the issue to Dr van Saarloos (or his nominee) of 100,000 options in the Company exercisable within 5 years from the date of their issue, each entitling the holder to be issued one share upon payment of an exercise price of \$1.00 per option.

5. Confidentiality

The parties covenant that except as may be reasonably necessary:

- (a) for the Company to carry on its business or;
- (b) for a party to comply with any law or an enquiry, request or order from any court, government or governmental authority having jurisdiction whether local, State or Federal and whether domestic or foreign.

the parties, and the parties will procure that the Company and the employees and agents of LEI and the Company, shall keep the secrets of the parties and the Company and in relation to the excimer laser and they will not at any time without the written consent of the other party divulge or release to any person the original, a copy, any extract or the contents of any documents, correspondence, accounts, records, design, drawings, plans,

memoranda, dealings, connections or secrets (together called "information") of the parties or the Company or in relation to the excimer laser; and they will implement and do all such things as may be necessary to maintain the confidentiality of the workings of the businesses of the parties and the Company and in relation to the excimer laser; and to provide security of custody for all information in the possession or knowledge of the parties, the Company and the employees and agents of L2I and the Company.

6. Further Assurances.

Each party will sign, execute and complete or cause to be signed, executed and completed all further assurances and documents and will do and execute or cause to be done and executed all further acts, matters and things as are required to give effect to this Agreement.

EXECUTED as an Agreement.

THE COMMON SEAL of LIONS EYE
INSTITUTE INC was affixed to this
document in the presence of:



[Signature]
Governor

[Signature]
Governor

John M. Knowles
Name (please print)

BRIAN NEWTON KING
Name (please print)
JOHN WHITECROSS NICKOLL LYALL

SIGNED by DR PAUL VAN SAARLOOS in the
presence of:

[Signature]
Witness

[Signature]
Dr Paul Van Saarloos

IT IS CONSTITUTED
Name (please print)

PKS

Service Agreement

Doctor Paul van Saarloos

TELCO Medical Technologies Pty Ltd
ACN 009 234 173

and

The Lions Eye Institute of Western Australia Incorporated

FREEHILL
HOLLINGDALE
& PAGE

BARRISTERS & SOLICITORS

AMP Building 140 St Georges Terrace
Perth 6000 Western Australia
Telephone (08) 9211 7777 Int + (61 8) 9211 7777 Facsimile (08) 9211
7878

DX 104 Perth
Reference:

PERTH SYDNEY MELBOURNE CANBERRA BRISBANE SINGAPORE HANOI HO
CHI MINH CITY

CORRESPONDENT OFFICE IN JAKARTA

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This executiv service agreement

is made on 21st May 1999 between the following parties:

1. **TELCO Medical Technologies Pty Ltd**
ACN 009 234 173
of c/- 2 Verdun Street, Nedlands, Western Australia
(TMT)
2. **The Lions Eye Institute of Western Australia Incorporated**
of 2 Verdun Street, Nedlands, Western Australia
(LEI)
3. **Doctor Paul van Saarloos**
of 14 Dunster Street, Karrinyup, Western Australia
(Dr van Saarloos)

Recitals

- A. TMT has agreed to confirm the appointment of Dr van Saarloos as its managing director and the appointment of Dr van Saarloos as executive director - chief technical officer and Dr van Saarloos has agreed to accept the appointments as managing director of TMT and executive director - chief technical officer of TMT on the terms of this Agreement and for the periods set out in Clause 2 of this Agreement.
- B. Dr van Saarloos acknowledges and accepts that the TMT Board is likely to appoint a new managing director with relevant international industry experience and standing in conjunction with a US-related venture capital financing activities of TMT where that is considered prudent by the TMT Board in that context or required by those capital investors, and that on this occurring as contemplated by clause 2 of this Agreement Dr van Saarloos will relinquish his appointment as managing director of TMT and continue with his appointment as executive director - chief technical officer in accordance with the terms of this Agreement.
- C. TMT, LEI and Dr van Saarloos have agreed that Dr van Saarloos may continue to spend 10% of his working time as director of the Lasers and Bio-engineering Research Group of LEI in the capacities agreed between LEI and Dr van Saarloos.
- D. During his employment with the Employers, Dr van Saarloos will create and acquire experience, confidential information, trade secrets, know-how and particular skills in the affairs, practices, customer requirements and trade connection with the technology and activities of the Employers.
- E. Because of the importance to the Employers of the knowledge, Information and other matters which will be created by Dr van Saarloos and to which the Employers will become entitled pursuant to this Agreement, the Employers wish to provide for the protection of that confidential information, trade secrets and know-how after the termination of Dr van Saarloos' employment with either TMT or LEI.

The **es agree**

in consideration of, among other things, the mutual promises contained in this Agreement:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Access Period means the period commencing on the Appointment Date and ending on the later of:

- (a) in relation to the position of managing director, the date which is seven (7) years after Dr van Saarloos ceases to be managing director of TMT or the date on which any Legal Proceedings have been finally resolved; or
- (b) in relation to the position of executive director - chief technical officer, the date which is seven (7) years after Dr van Saarloos ceases to be executive director - chief technical officer of TMT or the date on which any Legal Proceedings have been finally resolved; or,
- (c) in relation to the position of director of the Lasers and Bio-Engineering Research Group of LEI, the date which is seven (7) years after Dr van Saarloos ceases to be a director of the Lasers and Bio-Engineering Research Group of LEI or the date on which any Legal Proceedings have been finally resolved.

Appointment Date means the date Dr van Saarloos commenced as managing director of TMT or as executive director - chief technical officer of TMT or as a director of the Lasers and Bio-Engineering Research Group of the LEI;

Board Documents means any document produced, amended, considered, relied on or referred to by any member of the Board of TMT during the Service Period;

Board of TMT means the board of directors of TMT;

Employers means TMT and/or LEI, as the context requires;

Equity Rights means options, shares, debentures or any other form of equity in TMT and/or LEI;

First Round of Financing means the date upon which the last of the funds relating to a fundraising by TMT, which is to occur by 30 June 1999, are deposited into a bank account nominated by TMT;

Information means all commercially valuable and/or sensitive information of whatever kind or nature which is in tangible or documented form (or communicated orally and subsequently captured in tangible or documented form) and which Dr van Saarloos:

- (a) obtains from LEI or TMT; or
- (b) creates in the course of his employment by LEI and/or TMT respectively;
- (c) but shall not include:

- (1) information which is or comes into the public domain otherwise than by disclosure or default of Dr van Saarloos;
- (2) information which was or is lawfully obtained or available from a third party who was lawfully in possession of the same and free to disclose it;
- (3) information the disclosure of which is required by law; or
- (4) Dr van Saarloos' own stock of knowledge, skill and experience acquired by him prior to or in the course of the performance of his duties as an employee of LEI and/or TMT.

Intellectual Property means all intellectual property rights existing anywhere in the world including without limitation any Information, patent, design (whether registered or not), copyright, trade mark, trade secrets or other right whether existing under statute, at common law or in equity;

Legal Proceedings means any claim, action, suit or demand which relates to or arises in connection with Dr van Saarloos' employment under this Agreement;

LEI Executive Committee means the executive committee of LEI, as described in LEI's constitution;

LEI Sub-Committee means the LEI Sub-Committee of three (3) persons set up by LEI for the purpose of recommending to the LEI Executive Committee future research and scientific direction of LEI and/or of individual research projects and an intellectual property and incentive policy for LEI, individuals and/or particular research groups;

Month means calendar month;

Relevant Documents means any document produced, amended, considered, relied on, referred to or relevant to the position of executive director - chief technical officer of TMT or the position of director of the Lasers and Bio-Engineering Research Group of the LEI during the Service Period;

Service Period means the period commencing on the Appointment Date and ending on:-

- (i) in relation to the position of managing director of TMT, the date Dr van Saarloos ceased to be managing director of TMT; and
- (ii) in relation to the positions of executive director - chief technical officer of TMT and director of the Lasers and Bio-Engineering Research Group of LEI, the Termination Date;

Termination Date means the date of three (3) years from the completion of the First Round of Financing currently being undertaken by TMT, when Dr van Saarloos ceases to be employed by both TMT and LEI unless terminated earlier in accordance with clauses 19 and 21 and 22 of this Agreement; and,

Trade Sale means any proposal equivalent to the sale of assets and undertaking of TMT, whether by licence, sale of assets, sale of shares or otherwise, which the Board of TMT, after considering its duties at law and the interests of shareholders, considers should be a sale.

06-001-2000 14.44 FROM FREEMILLS

Interpretation

In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) a reference to termination of this Agreement includes a reference to termination of Dr van Saarloos' contract of employment;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this subclause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a party includes that party's successors and permitted assigns;
- (h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (i) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.

2 Appointment

2.1 TMT confirms the appointment of Dr van Saarloos as its managing director and the substantive appointment of Dr van Saarloos as its executive director - chief technical officer in Perth unless otherwise agreed, and Dr van Saarloos accepts the confirmation of appointments beginning on 1 January 1999 and continuing until:-

- (a) with respect to the appointment as managing director, the earlier of the Termination Date or the appointment of a new managing director with relevant international industry experience and standing by the Board of TMT in conjunction with subsequent US-related venture capital financing activities of the Company, as may be considered prudent by the Board in that context or as may be required by those capital investors; and,
- (b) with respect to the appointment as executive director - chief technical officer, the Termination Date.

2.2 LEI confirms the appointment of Dr van Saarloos as director of the Lasers and Bio-Engineering Research Group and as a member of the LEI Sub-Committee in Perth unless otherwise agreed, on the terms set out in this Agreement and Dr van

Saarloos accepts the confirmation of appointment beginning on 1 January 1999 and continuing until the Termination Date.

3 Duties of Dr van Saarloos

3.1 General duties to TMT

Dr van Saarloos must for 90% of his working time:

- (a) devote his attention and skill during normal business hours, and at other times as reasonably necessary, to the duties of office;
- (b) faithfully and diligently perform the duties and exercise the powers:
 - (1) consistent with the position of the managing director (whilst he holds that position) and of the executive director - chief technical officer; and
 - (2) assigned to Dr van Saarloos by the Board of TMT;
- (c) be managing director of TMT until a new permanent managing director is appointed by the Board of TMT.;
- (d) promote the interests of TMT; and
- (e) comply with the policies of TMT

3.2 Duty to report to Board of TMT

Dr van Saarloos must:

- (a) report directly to the Board of TMT or, if a new managing director is appointed by TMT, to that person to the extent deemed appropriate by the Board, and to the Board of TMT;
- (b) provide prompt and full information to the Board of TMT regarding the conduct of the business of TMT by Dr van Saarloos; and
- (c) comply with reasonable directions given to Dr van Saarloos by the Board of TMT.

3.3 General duties to LEI

Dr van Saarloos must for 10% of his working time:

- (a) devote his attention and skill during normal business hours, and at other times as reasonably necessary, to the duties of office;
- (b) faithfully and diligently perform the duties and exercise the powers:
 - (1) consistent with director of the Lasers and Bio-Engineering Research Group and a member of the LEI Sub-Committee; and
 - (2) assigned to Dr van Saarloos by the LEI Executive Committee;
- (c) promote the interests of LEI; and
- (d) comply with the policies of LEI.

3.4 Duty to report to Director of LEI

Dr van Saarloos must:

- (a) report directly to the Director of [REDACTED]
- (b) provide prompt and full information to the Director of LEI regarding the conduct of the business of LEI's Laser and Bioengineering Research Group by Dr van Saarloos; and
- (c) comply with reasonable directions given to Dr van Saarloos by the Director of LEI.

3.5 Conflict of interest between TMT and LEI

- (a) If a conflict which may have potentially significant consequences for either TMT or LEI arises in relation to the performance by Dr van Saarloos of his obligations under this Agreement between the respective interests of TMT and LEI, Dr van Saarloos, TMT and LEI must raise the conflict as soon as possible after it arises with the other parties and all must act bona fide to endeavour to resolve the conflict.
- (b) No bona fide act or omission by Dr van Saarloos to identify, notify and resolve any conflict shall constitute grounds for either TMT or LEI to terminate the employment of Dr van Saarloos or affect Dr van Saarloos' entitlements under clause 6.3 of this Agreement.

4 Performance

4.1 Performance objectives

Dr van Saarloos must carry out his duties and responsibilities pursuant to this Agreement in accordance with the performance objectives agreed to between Dr van Saarloos and the Board of TMT and the LEI Executive Committee respectively.

4.2 Performance level

Dr van Saarloos must comply with the reasonable, detailed performance levels set by each of the Board of TMT and the Director of LEI respectively.

5 Further agreement

Not less than three (3) Months prior to the Termination Date the parties will meet to discuss the terms of any further executive service agreement that may be entered into.

6 Remuneration

6.1 Salary paid by TMT

Subject to clause 9, during the period that Dr van Saarloos serves TMT under this Agreement, TMT must pay Dr van Saarloos \$180,000 per annum (excluding superannuation), backdated to 1 January 1999. For the avoidance of doubt, to satisfy its obligations under this clause, TMT must:

- (a) for the period from 1 January 1999 until the day before the date of this Agreement, pay a pro rata amount equal to a salary at the rate of \$200,000

per annum minus the amount of Dr van Saarloos' salary prior to the date of this Agreement..

(b) from the date of this Agreement 180,000 per annum.

6.2 Salary paid by LEI

Subject to clause 9, during the period that Dr van Saarloos serves LEI under this Agreement, LEI must pay Dr van Saarloos \$20,000 per annum (excluding superannuation) from the date of this Agreement.

6.2A TMT and LEI may during the currency of the Lions Laser Joint Venture funding agree to pay Dr van Saarloos in different amounts provided the aggregate salary is equal to \$200,000.

6.3 Salary Review

The respective salaries set out in clauses 6.1 and 6.2 are subject to review in accordance with the respective policies of the Employers.

If no salary review occurs for more than 12 months, either party can initiate a review which will take into account individual performance, company performance, including but not limited to, the financial position and resources of the company, the status of the company's development and any equity configuration, and any other relevant factors.

6.4 Continuing benefits with LEI

The Employers will endeavour to continue to arrange, pay and provide all benefits to Dr van Saarloos as were provided to Dr van Saarloos pursuant to his previous employment with LEI.

6.5 Total Remuneration

The only salary and benefits which Dr van Saarloos will be entitled to receive under this Agreement are those pursuant to clauses 6.1, 6.2, 6.3, 7 and 13 if any entitlement arises pursuant to clause 13.

6.6 Payment of salary

The Employers will pay all salary entitlements due under clauses 6.1 and 6.2 to Dr van Saarloos not less frequently than monthly in arrears into a bank account nominated by Dr van Saarloos.

7 Superannuation

The Employers must pay superannuation contributions for the benefit of Dr van Saarloos pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) in respect to the salary they are obligated to pay to Dr van Saarloos under clauses 6.1 and 6.2 respectively.

8 Expenses and other entitlements

8.1 TMT expenses

- (a) TMT must reimburse Dr van Saarloos for reasonable out-of-pocket expenses incurred by Dr van Saarloos on the business of TMT.
- (b) TMT may require evidence of expenses incurred by Dr van Saarloos in accordance with the policies of TMT, as they are determined from time to time.

8.2 LEI expenses

- (a) LEI must reimburse Dr van Saarloos for reasonable out-of-pocket expenses incurred by Dr van Saarloos on the business of LEI.
- (b) LEI may require evidence of expenses incurred by Dr van Saarloos in accordance with the policies of LEI, as they are determined from time to time.

8.3 Equity rights not to form part of Agreement

- (a) The Parties acknowledge and agree that any and all Equity Rights provided to Dr van Saarloos by the Employers pursuant to any agreement, arrangement or scheme between any of the Parties (other than this Agreement) will not form part of or entail a right exercisable under this Agreement.
- (b) The Parties acknowledge and agree that any and all Equity Rights provided to Dr van Saarloos by the Employers pursuant to any agreement, arrangement or scheme between any of the Parties (other than this Agreement) may not be the subject of any prospective claim, action or suit for denied contractual benefits pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979* (as amended).

8.4 Loan by TMT to Dr van Saarloos

TMT agrees to provide a loan to Dr van Saarloos in respect to the exercise of any options to securities in the Company with an exercise price that is more than nominal that he may hold from time to time, on terms to be determined by the Board of TMT (but no less favourable than in any equity plan of the Company) and to be evidenced in writing by both Dr van Saarloos and TMT.

8.5 Acknowledgment by LEI of entitlements under previous employment

LEI recognises and accepts that it will provide all entitlements due to Dr van Saarloos pursuant to his previous employment with LEI up to 31 December 1998.

9 Remuneration Packaging

The Employers will do what is reasonably practicable to enable Dr van Saarloos' remuneration to be packaged in a tax effective manner provided that the net cost to the Employers does not exceed the remuneration to be paid by the Employers under clauses 6 and 7 of this Agreement.

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10 Access to Board Documents

10.1 Maintenance of records

TMT must keep a complete set of Board Documents, in chronological order, in secure custody during the Access Period.

10.2 Access to and use of Board Documents

- (a) Whilst Dr van Saarloos is a director of TMT, TMT must give Dr van Saarloos full and free access to all Board Documents on request.
- (b) After Dr van Saarloos ceases to be a director of TMT, TMT must, upon reasonable request by Dr van Saarloos, at any time up to the end of the Access Period:
 - (1) give Dr van Saarloos (or a person nominated in writing by Dr van Saarloos) access to inspect the Board Documents at the registered office of either TMT (or such other place agreed to by TMT and Dr van Saarloos); and
 - (2) provide Dr van Saarloos with copies of any Board Documents requested by Dr van Saarloos at no cost to Dr van Saarloos; within fourteen (14) days of the request.
- (c) Any information obtained by Dr van Saarloos under clause 10.2 (a) or (b) may be used only for the purpose of assisting Dr van Saarloos to defend, appeal, commence or settle Legal Proceedings.
- (d) Upon written request by TMT Dr van Saarloos agrees to return to TMT or destroy copies of any Board Document containing confidential information obtained from TMT under this clause 10.2 and any copies of them within ten (10) days after all Legal Proceedings have been finally resolved.
- (e) TMT acknowledges that monetary damages alone would not be adequate compensation to Dr van Saarloos for TMT breach of its obligations under this clause 10.2 and that accordingly specific performance of those obligations is an appropriate remedy.

10.3 Confidentiality and Privilege

- (a) Dr van Saarloos must not disclose any confidential information contained in the Board Documents to third parties unless:
 - (1) TMT has given its prior written consent;
 - (2) Dr van Saarloos is required to do so by law;
 - (3) the disclosure is made for the purpose of obtaining professional advice prior to which, Dr van Saarloos obtains from the persons giving the professional advice confidentiality undertakings in terms similar to those in clause 13 of this Agreement to ensure all matters disclosed are kept confidential; or
 - (4) the disclosure is made for the purpose of defending, appealing, commencing or settling Legal Proceedings and Dr van Saarloos uses reasonable endeavours to ensure all matters disclosed are kept confidential.

- (b) Where Dr van Saarloos is entitled to disclose confidential information under clause 10.3(a), TMT irrevocably authorises Dr van Saarloos to waive legal professional privilege and any other privilege on behalf of TMT. In all other cases where the Board Documents include any information to which legal professional privilege attaches, Dr van Saarloos must use reasonable endeavours not to waive the privilege.

11 Access to Relevant Documents

11.1 Maintenance of records

TMT and LEI must keep a complete set of Relevant Documents in secure custody during the Access Period.

11.2 Access to and use of Relevant Documents

- (a) Whilst Dr van Saarloos is executive director - chief technical officer of TMT or director of the Lasers and Bio-Engineering Research Group of LEI, TMT or LEI, as the case may be, must give Dr van Saarloos full and free access to all Relevant Documents on request.
- (b) After Dr van Saarloos ceases to be executive director - chief technical officer of TMT or a director of the Lasers and Bio-Engineering Research Group of LEI, TMT or LEI, as the case may be, must, upon reasonable request by Dr van Saarloos, at any time up to the end of the Access Period:
- (1) give Dr van Saarloos (or a person nominated in writing by Dr van Saarloos) access to inspect the Relevant Documents at the registered office of either TMT or LEI, as the case may be (or such other place agreed to by TMT or LEI, as the case may be, and Dr van Saarloos); and
 - (2) provide Dr van Saarloos with copies of any Relevant Documents requested by Dr van Saarloos at no cost to Dr van Saarloos;
- within fourteen (14) days of the request.
- (c) Any information obtained by Dr van Saarloos under clause 11.2 (a) or (b) may be used only for the purpose of assisting Dr van Saarloos to defend, appeal, commence or settle Legal Proceedings.
- (d) Upon written request by TMT or LEI, as the case may be, Dr van Saarloos agrees to return to TMT or LEI, as the case may be, or destroy copies of any Relevant Document containing confidential information obtained from either TMT or LEI under this clause 11.2 and any copies of them within ten (10) days after all Legal Proceedings have been finally resolved.
- (e) The Employers acknowledge that monetary damages alone would not be adequate compensation to Dr van Saarloos for either TMT or LEI's breach of its obligations under this clause 11.2 and that accordingly specific performance of those obligations is an appropriate remedy.

11.3 Confidentiality and Privilege

- (a) Dr van Saarloos must not disclose any confidential information contained in the Relevant Documents to third parties unless:

- (1) TMT or LEI, as the case be, has given its the prior written consent;
 - (2) Dr van Saarloos is required to do so by law;
 - (3) the disclosure is made for the purpose of obtaining professional advice prior to which, Dr van Saarloos obtains from the persons giving the professional advice confidentiality undertakings in terms similar to those in clause 14 of this Agreement to ensure all matters disclosed are kept confidential; or
 - (4) the disclosure is made for the purpose of defending, appealing, commencing or settling Legal Proceedings and Dr van Saarloos uses reasonable endeavours to ensure all matters disclosed are kept confidential.
- (b) Where Dr van Saarloos is entitled to disclose confidential information under clause 11.3(a), the Employers irrevocably authorise Dr van Saarloos to waive legal professional privilege and any other privilege on behalf of either TMT or LEI, as the case may be. In all other cases where the Relevant Documents include any information to which legal professional privilege attaches, Dr van Saarloos must use reasonable endeavours not to waive the privilege.

12 Leave

12.1 Leave entitlements

- (a) Dr van Saarloos is entitled to public holidays, long service leave, bereavement leave, parental leave, annual leave and sick leave in conformity with statutory entitlements under the *Minimum Conditions of Employment Act 1993* (as amended) and *Long Service Leave Act 1958* (as amended).
- (b) Dr van Saarloos must take annual leave at a period or periods agreed by TMT, LEI and Dr van Saarloos. In the absence of agreement or statutory requirements to the contrary, the leave is to be taken when reasonably directed by TMT and LEI on at least one (1) Month's notice.

12.2 Accrued leave and long service leave

Subject to any statutory provision, the Employers may require Dr van Saarloos to take any accrued leave entitlement.

12.3 Evidence of illness or injury

Dr van Saarloos must, if required by TMT or LEI, provide evidence to their reasonable satisfaction that any absence was due to illness or involuntary injury.

12.4 Past Service with LEI

LEI will be wholly responsible for the payment of any and all entitlements accrued by Dr van Saarloos under or pursuant to any previous employment agreement, engagement or arrangement between LEI and Dr van Saarloos.

13 Sub-Committee of LEI

- 13.1 Dr van Saarloos will be a member of the LEI Sub-Committee.
- 13.2 No recommendation of the LEI Sub-Committee relating to Intellectual Property of which Dr van Saarloos is an inventor or co-inventor will be put to the LEI Executive Committee without the recommendation of Dr van Saarloos and the policy of the LEI Executive Committee must be approved by Dr van Saarloos in relation to any invention of which he is an inventor or co-inventor. The members of the LEI Sub-Committee, including Dr van Saarloos, must act diligently and reasonably in endeavouring to deal with Dr van Saarloos' business. Any recommendation or approval required by Dr Van Saarloos in accordance with this clause shall not be unreasonably withheld or delayed and the LEI Sub-Committee and LEI Executive Committee will deal promptly with any recommendation of Dr Van Saarloos.
- 13.3 Until a policy in respect of Intellectual Property is implemented by the LEI Executive Committee, LEI:
- (a) will not commercialise any Intellectual Property of which Dr van Saarloos is one of the inventors or sole inventor;
 - (b) will file all patent applications in LEI's name; and
 - (c) will continue to fund all research projects conducted by Dr van Saarloos as currently arranged.

14 Confidentiality

- 14.1 Without prejudice to any obligation of confidence which the law may impose on Dr van Saarloos, during his employment he shall:
- (a) use the Information solely to carry out his duties pursuant to his contract of employment with LEI and TMT;
 - (b) keep the Information secure and confidential at all times;
 - (c) disclose the Information:
 - (1) only to persons who need to know the Information to carry out functions or obligations for LEI and TMT; or
 - (2) to persons who are authorised by LEI or TMT to obtain the Information.
- 14.2 On termination of his employment Dr van Saarloos shall return to LEI and TMT any originals and any copies or extracts of the Information. If Dr van Saarloos has copied any Information to a computer disk (including a hard disk) or any similar electronic storage medium, Dr van Saarloos undertakes to permanently delete any such copy or record on termination of his employment.
- 14.3 Following termination of his employment Dr van Saarloos shall not:
- (a) use the Information; or

- (b) disclose the Information to any person except as may be authorised in writing by LEI and/or TMT.

14.4 Dr van Saarloos' obligations under this clause shall survive the termination of the Agreement.

14.5 The parties to this Agreement shall keep its terms and provisions confidential and shall not disclose the same to any third party provided that nothing contained in this clause shall prevent:

- (a) a party from disclosing the terms and conditions of this Agreement for the purpose of obtaining legal or other professional advice from a qualified adviser;
- (b) TMT, LEI or Dr van Saarloos from disclosing the terms of this Agreement to a third party provided the party concerned first obtains a written confidentiality undertaking from that third party and receive the consent of the other parties, which shall not be unreasonably withheld or delayed; or,
- (c) disclosure in the event that disclosure is required by operation of law or order of a court or in the event that the Agreement is sought to be enforced by any party.

15 Ownership of intellectual property

15.1 Ownership

All Intellectual Property created by Dr van Saarloos within the scope of his employment shall be owned as follows:

- (a) if Intellectual Property is created by Dr van Saarloos within the scope of his employment by TMT then such Intellectual Property shall be owned by TMT; and
- (b) if Intellectual Property is created by Dr van Saarloos within the scope of his employment by LEI then such Intellectual Property shall be owned by LEI.

15.2 Use of facilities and resources

Without limiting the generality of clause 15.1 all Intellectual Property created by Dr van Saarloos, whether with or without the knowledge of TMT or LEI, using the facilities or resources of either TMT or LEI (other than a non-material use of administrative and research support facilities, but not laboratory equipment) or the Information shall be owned solely by TMT or LEI respectively, notwithstanding that the creation of the Intellectual Property:

- (a) is not within the scope of Dr van Saarloos' normal duties;
- (b) is done by Dr van Saarloos in his own time; or
- (c) involved only partial use of either TMT's or LEI's facilities and/or resources or only partial use of the Information.

.3 Client of the Company

Without limiting the generality of clauses 15.1 and 15.2, all Intellectual Property created by Dr van Saarloos during the term of this Agreement for the purpose of any client, contract or project of either TMT or LEI or for any purpose related to the business of either TMT or LEI shall be owned by TMT or LEI respectively notwithstanding that the creation of such Intellectual Property:

- (a) is done by Dr van Saarloos in his own time; and
- (b) does not involve the use of TMT's or LEI's facilities or resources.

15.4 Dr van Saarloos' Intellectual Property

Notwithstanding anything contained in this clause, all Intellectual Property created by Dr van Saarloos other than that described in clauses 15.1, 15.2 and 15.3 shall be the sole property of Dr van Saarloos.

15.5 No policy by LEI on ownership of Intellectual Property

The LEI Sub-Committee and LEI Executive Committee each respectively shall make no recommendation or decision as to any policy which relates to the ownership of Intellectual Property pursuant to this clause.

16 Protection of the Employers' interests

16.1 Non-competition

Subject to clause 16.2, Dr van Saarloos shall not for a period of six (6) Months after termination or expiry of this Agreement be directly or indirectly engaged, concerned or interested in any capacity, in any business which is wholly or partly in competition with any business carried on by TMT nor, during that period, shall Dr van Saarloos provide technical, scientific, commercial or professional advice to any business that is wholly or partly in competition with any business carried on by TMT.

16.2 Enforcement of non-competition clause

- (a) If TMT terminates the Agreement in accordance with clauses 19 (but not clause 19.3) or if this Agreement expires TMT must elect whether to enforce the non-competition provision provided in clause 16.1 against Dr van Saarloos. In the event that TMT elects to enforce the provisions of clause 16.1, then it shall pay to Dr van Saarloos the sum of three hundred thousand (300,000) dollars, however, if this Agreement is terminated in accordance with clause 19.3, then the provisions of this clause 16, including clause 16.1 shall be binding upon Dr van Saarloos without the payment to him of any sum of money. If Dr van Saarloos terminates this Agreement in relation to a breach by TMT in accordance with clause 22, then clause 16.1 shall not apply.
- (b) The election by TMT as to whether it will enforce clause 16.1 against Dr Van Saarloos shall:
 - (1) in the case of termination of the Agreement by TMT pursuant to clause 19 be made and communicated to Dr Van Saarloos at that time; or

- 06-UCI-2000 14:48 FROM FREEHILLS TO 8-3453200 P.19
- (2) in the case of expiry of Agreement be made and communicated to Dr Van Saarloos no later than three months prior to the expiry date of the Agreement.

16.3 Non-solicitation

Subject to clause 16.4, Dr van Saarloos shall not for a period of six (6) Months after termination or expiry of this Agreement either directly or indirectly and whether on his own behalf or on behalf of any other business or other entity which is wholly or partly in competition with any business carried on by LEI or TMT:

- (a) canvass, solicit or attempt to entice away the custom or business of any customer or client of LEI or TMT;
- (b) canvass, solicit or approach or cause to be canvassed, solicited or approached any person or persons who were negotiating with LEI or TMT for the supply of goods or services as at the date of termination or expiry of this Agreement;
- (c) solicit or entice away or engage from LEI or TMT or offer or cause to be offered any employment or consultancy arrangement or other engagement to any employee or consultant of LEI or TMT.

16.4 Existing undertakings

- (a) Dr van Saarloos may honour personal undertakings given to existing EXCIMER customers of TMT prior to the date of this Agreement.
- (b) Dr van Saarloos shall provide in writing to TMT a list of all existing customers to whom undertakings have been given which specifies the nature and scope of the personal undertakings given in respect of each customer.

16.5 Restraints reasonable

- (a) The parties consider the restraints contained in this clause to be reasonable and intend the restraints to operate to the maximum extent.
- (b) If these restraints:
 - (1) are void as unreasonable for the protection of the interests of either TMT or LEI; and
 - (2) would be valid if part of the wording was deleted or the period or area was reduced,the restraints will apply with the modifications necessary to make them effective.

16.6 Restraints independent

The restraints contained in this clause are separate, distinct and several, so that the unenforceability of any restraint does not affect the enforceability of the other restraints.

16.7 Acknowledgments by Executive

Dr van Saarloos acknowledges that:

- 05-OCT-2000 14:48 FROM: FREEHILL
- (a) Dr van Saarloos will obtain information concerning the business and finances of TMT and LEI including trade secrets and industrial processes;
 - (b) disclosure of information could materially affect either TMT or LEI respectively;
 - (c) the restrictive covenants contained in this clause are reasonable and necessary for the protection of the goodwill of TMT and LEI respectively;
 - (d) the remedy of damages may be inadequate to protect the interests of TMT and LEI respectively and either TMT and LEI are entitled to seek and obtain injunctive relief, or any other remedy, in any Court; and
 - (e) in view of the importance of the restraints contained in this clause for the protection of the proprietary interests of both TMT and LEI, this clause will survive the termination of Dr van Saarloos' employment with either TMT or LEI in all circumstances including repudiation by either TMT or LEI of the remainder of this Agreement.

16.8 Survival of obligations

Dr van Saarloos' obligations under this clause survive the termination of this Agreement.

17 Restrictions on other activities of Dr van Saarloos

17.1 Exclusive engagement

Subject to clause 17.2, while Dr van Saarloos is employed by both TMT and LEI, Dr van Saarloos must not be engaged, concerned or interested in any other business without the prior written consent of both the Board of TMT and the LEI Executive Committee.

17.2 Directorship or position on board

- (a) Clause 17.1 does not prevent Dr van Saarloos accepting any directorship or position on the board of any company or industry body provided that Dr van Saarloos has the consent of both the Board of TMT and the LEI Executive Committee.
- (b) Dr van Saarloos will consent to act as a director of any subsidiary company of TMT.

17.3 Inducements

Other than under this Agreement and subject to clause 17.4, Dr van Saarloos must not accept any payment or other benefit as an inducement or reward for any act in connection with the business of either TMT or LEI except with the prior written consent of either TMT or LEI, as the case may be.

- 17.4 The parties acknowledge and accept that a breach of this clause 17 will occur in respect of any benefits flowing to Dr van Saarloos as a result of his membership of the LEI Sub-Committee.

18 Indemnity

18.1 Indemnity

- (a) To the maximum extent permitted by law and its articles or constitution, but only to the extent that insurance cover is obtained to provide such an indemnity pursuant to clause 18.1(b) or, if TMT fails to obtain relevant insurance cover, to the maximum extent specified in clause 18.1(e), TMT will indemnify Dr Van Saarloos against any Legal Proceedings, damage, loss, liability, cost, charges, expense, outgoing or payment (including legal expenses on a solicitor/client basis) suffered, paid or incurred by Dr Van Saarloos in connection with:
 - (1) Dr Van Saarloos being managing director or executive director - chief technical officer of TMT;
 - (2) the proper performance by Dr Van Saarloos of the employment obligations owed to TMT by him under this Agreement; or,
 - (3) a breach by TMT of its obligations pursuant to this clause.
- (b) For the purposes of complying with clause 18.1(a), TMT shall, subject to its financial capacity to do so and taking into account TMT's resources and activities and the best interests of the TMT, use its best endeavours to maintain the policies of insurance set out in clause 18.1(d)(1) ("the policies") covering the indemnity in clause 18.1 (a), for the term of this Agreement and following the termination of the Agreement, run-off cover for a period of 3 years for the policies.
- (c) For the purposes of obtaining the policies referred to in clause 18.1(b), TMT shall use its best endeavours to secure and maintain comprehensive industry standard insurance in relation to its activities.
- (d) The total liability of TMT under clause 18.1(a) is limited in respect of each and every claim to:
 - (1) the amount which TMT is able to recover with respect to each claim from the insurance contemplated by clause 18.1(b), that amount being:
 - (A) product liability: up to five million (5,000,000) dollars;
 - (B) director's and officer's liability: up to seven and a half million (7,500,000) dollars;
 - (C) professional indemnity: up to five million (5,000,000) dollars.
- (e) The total liability of TMT under clause 18.1(a) in the event that TMT fails to obtain relevant insurance is two hundred and fifty thousand (250,000) dollars to cover Dr van Saarloos' legal costs in defending a claim brought against him within 3 years of cessation of employment and damages awarded in such a claim in relation to an act or omission during the proper

performance by Dr van Saarloo of his obligations under this Agreement for which he is not indemnified under clause 18.1(a).

- (f) Dr Van Saarloo must comply with the terms and conditions of the policies referred to in clause 18.1(b).

18.2 Continuing Indemnity

The indemnity contained in clause 18.1 is an irrevocable, unconditional, continuing and principal obligation of TMT despite:

- (a) the resignation or removal of the Dr van Saarloo as managing director or executive director - chief technical officer;
- (b) any settlement of any dispute between Dr van Saarloo and TMT or any third party; or
- (c) the occurrence of any other thing whatsoever,

and remains in full force and effect until released by Dr van Saarloo or upon expiry of the insurance policy (including run-off cover as described in clause 18.1(b)) referred to in clause 18.1 or, in relation to the obligation in clause 18.1(e), until the expiry of the period mentioned in that paragraph.

18.3 Payment on demand

Any moneys payable by TMT under clause 18.1 are payable on demand to Dr van Saarloo by TMT.

19 Termination by TMT

19.1 Termination on notice

TMT may terminate the employment of Dr van Saarloo with TMT under this Agreement by giving Dr van Saarloo one (1) Month's notice in writing if:

- (a) Dr van Saarloo is unable to perform the inherent requirements of his employment for reasons other than in clause 19.3;
- (b) Dr van Saarloo fails to meet the reasonable performance requirements set in accordance with clause 4 of the Agreement for reasons other than in clause 19.3; or,
- (c) Dr van Saarloo is in material breach of his obligations under clause 3 or 14 of this Agreement (provided that where Dr van Saarloo is alleged by TMT to be in default, he has failed to remedy this default within twenty-eight (28) days of written notice of the default). Where there is any dispute as to whether there has been a material breach for the purposes of this paragraph (c), TMT and Dr van Saarloo agree to resolve the dispute expeditiously and the parties will continue to perform all their obligations under this Agreement while the dispute as to whether there has been a material breach is being resolved or remains in dispute;

unless Dr van Saarloo's failure to meet these requirements is a result of incapacitation due to illness or injury for a period not exceeding 3 consecutive months.

2 TMT may not terminate the employment of Dr van Saarloos with TMT pursuant to clause 19.1(a) or (b) until TMT has:

- (a) held prior discussions with Dr van Saarloos; and
- (b) given Dr van Saarloos a reasonable opportunity to respond to any allegations by TMT that he is unable to perform the inherent requirements of his employment or has failed to meet the performance requirements set in accordance with clause 4 of the Agreement.

19.3 Immediate termination

TMT may terminate the employment of Dr van Saarloos with TMT immediately without notice or payment of notice for serious misconduct or if Dr van Saarloos becomes unable under the Corporations Law to continue as a director.

19.4 Payment in lieu of notice

- (a) If TMT wishes to terminate the employment of Dr van Saarloos with TMT under clause 19.1 and notice is required to be given under clause 19.1, TMT may at its option, pay in lieu of part or all of the one (1) Month's notice period under clause 19.1.
- (b) Payment under clause 19.4(a) constitutes full satisfaction and discharge of TMT obligations with respect to notice of termination under clause 19.1.

19.5 Resignation as director

- (a) If on termination of the employment of Dr van Saarloos with TMT Dr van Saarloos is a director of TMT, Dr van Saarloos must resign as director of TMT.
- (b) Dr van Saarloos irrevocably appoints the Company Secretary of TMT, or any other employee of TMT nominated by TMT, as attorney to provide Dr van Saarloos' resignation on behalf of Dr van Saarloos if Dr van Saarloos refuses to resign upon termination of the employment of Dr van Saarloos with TMT.
- (c) Dr van Saarloos irrevocably appoints the Company Secretary of TMT, or any other employee of TMT nominated by TMT, as attorney to provide Dr van Saarloos' resignation on behalf of Dr van Saarloos in the event that Dr van Saarloos becomes permanently incapacitated by accident or illness or is incapable of resigning.

19.6 Obligations on termination

On termination of the employment of Dr van Saarloos with TMT, Dr van Saarloos must return to TMT all tangible property of TMT including, but not limited to, all books, documents, papers, materials, credit cards, cars and keys held by Dr van Saarloos or under Dr van Saarloos' control.

19.7 No compensation

If the employment of Dr van Saarloos with TMT is terminated by TMT in accordance with the terms of this Agreement, Dr van Saarloos has no further claim against TMT for compensation in respect of the termination.

19.8 Continued operation of Agreement after termination

If the employment of Dr van Saarloos with TMT is terminated under this Agreement, the Agreement will, subject to clause 19.9, continue in force but only to the extent that Dr van Saarloos is employed by LEI.

19.9 Option of LEI to employ Dr van Saarloos on termination by TMT

If TMT terminates the employment of Dr van Saarloos with TMT or if Dr van Saarloos terminates in accordance with clause 22, LEI will (but with absolute discretion as to which of the following it chooses):-

- (a) offer employment to Dr van Saarloos for all of the remaining 90% of Dr van Saarloos' working time on the same terms operating under this Agreement; or,
- (b) terminate the Dr van Saarloos' employment under this Agreement.

The parties may if they agree, enter into an agreement upon termination of this Agreement for the employment of Dr van Saarloos by LEI, for part of all of his time, on any terms they reach.

20 International personal consulting role

If a Trade Sale occurs prior to the Termination Date, TMT shall use reasonable endeavours to negotiate an international personal consulting role for Dr van Saarloos with the party to the Trade Sale.

21 Termination by LEI

21.1 Termination on notice

LEI may terminate the employment of Dr van Saarloos with LEI under this Agreement by giving Dr van Saarloos one (1) Month's notice in writing if:

- (a) Dr van Saarloos is unable to perform the inherent requirements of his employment for reasons other than in clause 21.3;
- (b) Dr van Saarloos fails to meet the performance requirements set in accordance with clause 4 of the Agreement for reasons other than in clause 21.3; or,
- (c) Dr van Saarloos is in material breach of his obligations under clause 3 or 14 of this Agreement (provided that where Dr van Saarloos is alleged by LEI to be in default, he has failed to remedy this default within twenty-eight (28) days of written notice of the default (Where there is any dispute as to whether there has been a material breach for the purposes of this paragraph (c), LEI and Dr van Saarloos agree to resolve the dispute expeditiously and the parties will continue to perform all their obligations under this Agreement while the dispute as to whether there has been a material breach is being resolved or remains in dispute.);

unless Dr van Saarloos' failure to meet these requirements is a result of incapacitation due to illness or injury for a period not exceeding 3 consecutive months.

2 LEI may not terminate the employment of Dr van Saarloos with LEI pursuant to clause 21.1 (a) and (b) until LEI has:

- (a) held prior discussions with Dr van Saarloos; and
- (b) given Dr van Saarloos a reasonable opportunity to respond to any allegations by TMT that he is unable to perform the inherent requirements of his employment or has failed to meet the performance requirements set in accordance with clause 4 of the Agreement.

21.3 Immediate termination

LEI may terminate the employment of Dr van Saarloos with LEI immediately without notice or payment of notice for serious misconduct.

21.4 Payment in lieu of notice

- (a) If LEI wishes to terminate the employment of Dr van Saarloos with LEI under clause 21.1 and notice is required to be given under clause 21.1, LEI may at its option, pay in lieu of part or all of the one (1) Month's notice period under clause 21.1.
- (b) Payment under clause 21.4(0) constitutes full satisfaction and discharge of LEI's obligations with respect to notice of termination.

21.5 Resignation as director

- (a) If on termination of the employment of Dr van Saarloos with LEI Dr van Saarloos is a director of LEI, Dr van Saarloos must resign as director of LEI.
- (b) Dr van Saarloos irrevocably appoints the Company Secretary of LEI, or any other employee of LEI nominated by LEI, as attorney to provide Dr van Saarloos' resignation on behalf of Dr van Saarloos if Dr van Saarloos refuses to resign upon termination of the employment of Dr van Saarloos with LEI.
- (c) Dr van Saarloos irrevocably appoints the Company Secretary of LEI, or any other employee of LEI nominated by LEI, as attorney to provide Dr van Saarloos' resignation on behalf of Dr van Saarloos in the event that Dr van Saarloos becomes permanently incapacitated by accident or illness or is incapable of resigning.

21.6 Obligations on termination

On termination of the employment of Dr van Saarloos with LEI, Dr van Saarloos must return to LEI all tangible property of LEI including, but not limited to, all books, documents, papers, materials, credit cards, cars and keys held by Dr van Saarloos or under Dr van Saarloos' control.

21.7 No compensation

If the employment of Dr van Saarloos with LEI is terminated by LEI in accordance with the terms of this Agreement, Dr van Saarloos has no further claim against LEI for compensation in respect of the termination.

1.8 Continued operation of Agreement after termination

If the employment of Dr van Saarloos with LEI is terminated under this Agreement, the Agreement will, subject to clause 21.9, continue in force but only to the extent that Dr van Saarloos is employed by TMT.

21.9 Option of TMT to employ Dr van Saarloos on termination by LEI

- (a) If LEI terminates the employment of Dr van Saarloos with LEI or if Dr van Saarloos terminates in accordance with clause 22, TMT may offer to Dr van Saarloos employment for all of the remaining 10% of Dr van Saarloos' working time on the same terms operating under this Agreement. If TMT chooses not to offer Dr van Saarloos such employment, Dr van Saarloos may provide consulting services to third parties for the remaining 10% of his time provided: he notifies TMT of the nature of those consulting arrangements; and
- (b) those consulting arrangements do not compete with the current business of TMT.

22 Termination by Dr van Saarloos

22.1 Termination upon default of payment of remuneration

- (a) If TMT or LEI fail to meet their obligations under clauses 6, 7, 8 or 9, Dr van Saarloos may terminate his employment with the Employer alleged to be in default, but only where the Employer alleged to be in default has failed to remedy this default within fourteen (14) days of written notice of the default from Dr van Saarloos.

22.2 Termination upon material breach

- (a) Subject to paragraphs 22.2(b) and 22.2(c) below, if TMT is in material breach of its obligations under clauses 2, 18 or 20 or if LEI is in material breach of its obligations under clauses 2, 13 or 18, Dr van Saarloos may terminate his employment with the Employer who is in material breach but only where that Employer has failed to remedy the material breach within twenty eight (28) days of written notice of the material breach from Dr van Saarloos.
- (b) Where there is any dispute as to whether there has been a material breach for the purposes of paragraph 22.2(a) above;
 - (1) the Employer alleged to be in material breach and Dr van Saarloos agree to resolve the dispute expeditiously; and,
 - (2) the parties will continue to perform all their obligations under this Agreement while the dispute as to whether there has been a material breach is being resolved or remains in dispute.
- (c) It shall not be a material breach by TMT for the Board of TMT to appoint a new managing director by valid resolution of the Board of TMT in accordance with clause 2.1 of this Agreement.

22.3 Termination under other agreement

Nothing in this Agreement shall prevent Dr van Saarloos from exercising any right he may have to terminate his employment with TMT under any other separate written agreement between Dr van Saarloos and TMT, and such termination of employment with TMT by Dr van Saarloos shall be valid termination of employment with TMT by Dr van Saarloos for the purposes of this Agreement.

23 General

23.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Agreement:
 - (1) must be in legible writing and in English addressed as shown at the commencement of this Agreement, or as specified to the sender by any party by notice;
 - (2) where the sender is a company, must be signed by an officer or under the common seal of the sender;
 - (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, three (3) business days from and including the date of postage/on delivery to the addressee, providing Dr van Saarloos is not on approved leave from the Employer at the time the notice is given; or
 - (C) if by facsimile transmission, whether or not legibly received, when transmitted to/received by the addressee providing Dr van Saarloos is not on approved leave from the Employer at the time the notice is given,but if the delivery or receipt is on a day which is not a business day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following business day; and,
 - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within two (2) hours after transmission is received or regarded as received under clause 23.1(a)(3) and informs the sender that it is not legible.
- (c) In this clause 23.1, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

23.2 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of Western Australia.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.
- (c) Each of the parties irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

23.3 Prohibition, enforceability and severance

- (a) Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (c) If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

23.4 Waiver

- (a) The failure of either party at any time to require performance by the other party of any provision of this Agreement does not affect the party's right to require the performance at any time.
- (b) The waiver by either party of a breach of any provision must not be held to be a waiver of any succeeding breach of the provision or a waiver of the provision itself.

23.5 Counterparts

- (a) This Agreement may be executed in any number of counterparts each of which is an original instrument and all of which constitute one and the same instrument.
- (b) If the Agreement is executed in counterparts:
 - (1) each Party will be bound by the provisions of the Agreement from the time when that party executes a counterpart, but
 - (2) if all the other Parties do not execute a counterpart within fourteen (14) days of that Party executing the counterpart then that Party and any other Party who has signed the counterpart will cease to be bound by this Agreement.

23.6 Entire agreement

This Agreement supersedes all previous agreements in respect of Dr van Saarloos' employment by both TMT and LEI as from 1 January 1999 and embodies the entire agreement between Dr van Saarloos and TMT and LEI respectively in respect of his employment with each.

Nothing in this clause will prevent the parties to this Agreement from entering into separate agreements regarding such matter as equity plans or bonus

Executed as an agreement:

Signed by
Doctor Paul van Saarloos
in the presence of:

Witness

LINDA M CAMPBELL

Name (please print)

Signed for
TELCO Medical Technologies Pty Ltd
by its representative
in the presence of:

Witness

ALBERT KEVIN ROBERT WATSON

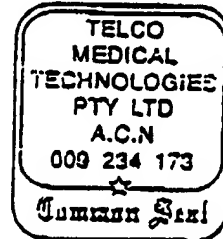
Name (please print)

Signed for
The Lions Eye Institute of Western Australia Incorporated
by its representative in
the presence of:

Witness

MARIE - LYNNE WISE

Name (please print)



Representative

I J CONSTABLE

Name (please print)

Representative

GARY EDWARDS ANONE

Name (please print)

BRIAN NEWTON KING



Signed for
TELCO Medical Technologies Pty Ltd
by its representative
in the presence of:

[Signature]

Witness

SIMON CHARLES MARTIN

Name (please print)

[Signature]

Representative

ALBERT KEVIN ROBERT WATSON

Name (please print)

Signed for
The Lions Eye Institute of Western Australia Incorporated
by its representative in
the presence of:

[Signature]

Witness

MARIE - LOUISE LUKE

Name (please print)

[Signature]

Representative

GARY EDWARDS ANGLADE

Name (please print)

[Signature]

BRIAN NEWTON KING

